

(2003) 09 PAT CK 0092
In the Patna High Court
Case No : C.W.J.C. No. 2614 of 2001

Dinesh Kumar Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Citation : (2004) 1 PLJR 164

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Gautam Saha, for the Appellant; P.K. Shahi, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—Petitioner was an Assistant Sub Inspector in the Central Industrial Security Force. A departmental proceeding was initiated against him and the disciplinary authority by order dated 30th of June, 1999 (Annexure-21) inflicted the penalty of removal from service. Aggrieved by the same, Petitioner preferred appeal and the appellate, authority by order dated 12th of November, 1999 (Annexure-23) dismissed the same. Petitioner thereafter preferred revision and the revisional authority by order dated 30th of April, 2001 (Annexure-1) modified the punishment of removal to that of compulsory retirement from service with full retrial benefits.

2. In this writ application prayer of the Petitioner is to quash the aforesaid orders as also the enquiry report dated 8.5.1999 (Annexure-2) which formed the basis of punishment.

3. Petitioner, a Sub Inspector of the Central, Industrial Security Force (for short the Force) was posted at the relevant time in National Thermal Power Corporation at Kahalgaon. He was served with a memo of charge dated 15th of January, 1999 (Annexure-3). According to the charge on 21.12.1998 at 4.30 P.M. Petitioner came at the volley ball ground and started talking in high pitch with the member playing there and used abusive language against the officers of the

Force which led to commotion in the play ground. It was further alleged that the Assistant Commandant, Reserve Inspectors and other officers who were in the play ground tried to counsel him but the Petitioner behaved in a derogatory manner with them. The second charge pertained to infliction of five penalties earlier for the misconduct. Petitioner was given opportunity to defend his case and ultimately the enquiry officer submitted his report dated 8.5.1999 (Annexure-2) holding the Petitioner guilty of both the charges. A copy of the enquiry report was made available to the Petitioner and he was asked to submit the reply and the disciplinary authority on consideration of the same inflicted the penalty of removal from service. Appeal preferred against the said order also failed but the revision application filed by the Petitioner met with partial success and the revisional authority by order dated 30.4.2001 reduced the penalty of removal from service to that of compulsory retirement with full retiral benefits.

4. Mr. Gautam Saha appearing on behalf of the Petitioner submits that Charge No. 1 is false and fabricated and has not been proved. He submits that the Petitioner instead of being sent to the N.T.P.C. Hospital was sent to the Bhagalpur Medical College and Hospital and it was done to procure a favourable report. He also points out that none of the members of the force who were, in fact, playing the volley ball has been examined in the departmental proceeding and as such the finding of guilt recorded by the enquiry officer is unsustainable. He also points out that although the doctor has given a report that the Petitioner was under the influence of liquor but the said report has been given without any test. Mr. P.K. Shahi, Central Government Standing Counsel, however, appearing on behalf of the Respondents submits that this Court cannot act as a Court of appeal against the finding of the enquiry officer, the disciplinary authority, appellate authority and the revisional authority. He points out that the Petitioner in sum and substance is asking for reappraisal of the evidence which is not possible.

5. Having appreciated the rival submission, I do not find any substance in the submission of Mr. Saha. It is well settled that this Court does not act as a Court of appeal against the finding recorded by the authorities in a departmental proceeding. It interferes with the finding only when it is shown that the same is based on no material or the finding has been rendered without consideration of the relevant material or on consideration of irrelevant material or a person duly instructed in law shall not come to that conclusion. Here in the present case the Assistant Commandant and other officers of the Force who were present at the play ground had specifically stated that the Petitioner under the influence of liquor used unparliamentary language against the senior officers and created commotion in the play ground. The doctor of the Bhagalpur Medical College Hospital who had examined the Petitioner had stated about the consumption of liquor by the Petitioner. No reason has been assigned as to why the doctor of the Hospital shall give a false report. Thus the finding of guilt has been recorded on appreciation of evidence which cannot be said to be perverse calling for interference by this Court in exercise of its writ jurisdiction. In my opinion non-examination of the members of the Force who were playing volley ball is of no

consequence.

6. Mr. Saha, then submits that while making available to the Petitioner the memo of charge dated 15th of January, 1999 a list of document to prove the misconduct was also given but the Petitioner was not given copies thereof and as such the enquiry has been held in breach of the principle of natural justice. Mr. Shahi, however, submits that all the documents were supplied to him during the departmental enquiry and merely the fact that it was not supplied along with the memo of charge shall not vitiate the enquiry.

7. I do not find any substance in the submission of Mr. Saha. True it is that to the memo of charge reference of certain documents were made for the purpose of proving the charge. It is not the case of the Petitioner that those documents were not supplied to him during the departmental enquiry. In my opinion mere non-supply of the document along with the memo of charge shall not vitiate the enquiry. Nothing has been pointed out to show that by non-supply of the document while making available the memo of charge, Petitioner had in any way prejudiced the Petitioner.

8. Mr. Saha contends that the disciplinary authority had made up his mind to punish the Petitioner and the enquiry was an empty formality. In this connection he has referred to charge No. 2 wherein it has been stated that notwithstanding infliction of five punishments for misconduct earlier, Petitioner had not improved his conduct. This, according to Mr. Saha, clearly shows that the Petitioner was held guilty of the misconduct even at the time of framing of the charge. I do not have the slightest hesitation in rejecting this submission. Charge No. 2 narrated the fact of infliction of five penalties to the Petitioner earlier and in spite of that he had not corrected himself. Thus it cannot be said that conclusive finding was recorded holding the Petitioner guilty of misconduct.

9. Mr. Saha then submits that the Petitioner had asked for the change of the enquiry officer by letter dated 19.4.1999 (Annexure-17) and 11.6.1999 but the enquiry officer was not changed. The statement of the Petitioner that he filed application dated 19.4.1999 for the change of the enquiry officer has been denied by the Respondents and it has been specifically averred in the counter affidavit that the said letter was never received by the disciplinary authority. In fact Petitioner filed application on 19.4.1999 before the enquiry officer seeking adjournment for submission of his statement. Thus the very plea of the Petitioner that he asked for change of the enquiry officer is unfounded on fact and hence the submission made by Mr. Sana is fit to be rejected.

10. Mr. Saha also submits that the Petitioner was not permitted to cross-examine the witnesses examined to prove the misconduct. Merely the fact that the Petitioner did not cross-examine the witnesses itself shall not vitiate the enquiry. Petitioner was given opportunity to cross-examine the witnesses and in case he had chosen not to cross-examine them, he has to blame himself. I do not find any merit in this submission of Mr. Saha also.

11. All the submissions made on behalf of the Petitioner having no substance, this writ application has no merit and it is dismissed accordingly. No costs.